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**September 4, 1996**

**RECEIVED**

**SEP 4 - 1996**

**Mr. William F. Caton , Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N. W.  
Washington, D. C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

**DOCKET FILE COPY ORIGINAL**

**Re: Comments of Voice-Tel in Response to the NPRM  
relating to the Implementation of the Telecommunications  
Act of 1996 regarding Telemessaging, Electronic  
Publishing, and Alarm Monitoring Services, (CC DOCKET  
NO. 96-152)**


**Dear Mr. Caton:**

**Enclosed for filing with the Commission, on behalf of Voice-Tel are an original and eleven copies of its Comments in the above-captioned docket.**

**Please date-stamp the extra copy of this letter that has been enclosed for this purpose and return it in the self-addressed envelope that has been provided.**

**If you have any questions with respect to this matter please do not hesitate to call the undersigned.**

**Sincerely,**

  
**Ruth S. Baker-Battist  
Counsel for Voice-Tel**

**Enclosures**

No. in Original rec'd  
DATE

**0410**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

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**SEP 4 - 1996**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**In the Matter of**

**Implementation of the  
Telecommunications Act of 1996**

**Telemessaging,  
Electronic Publishing, and  
Alarm Monitoring Services**

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**CC Docket No. 96-152**

**COMMENTS OF  
VOICE-TEL**

**Ruth S. Baker-Battist  
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Suite 1007  
Chevy Chase, MD 20815  
(301) 718-0955**

**September 4, 1996**

**An Attorney for Voice-Tel**

## TABLE OF CONTENTS

SUMMARY.....	ii
I. INTRODUCTION .....	2
A. DESCRIPTION OF VOICE-TEL AND ITS BUSINESS .....	2
B. SCOPE OF THESE COMMENTS.....	3
II. SECTION 260 PROHIBITS ALL DISCRIMINATION WITHOUT REGARD TO THE REASONS BEHIND THE DISCRIMINATION .....	4
A. SECTION 260 PROHIBITS ALL DISCRIMINATION IN THE PROVISION OF VOICE MESSAGING SERVICES .....	5
B. SECTION 260 PROHIBITS ALL DISCRIMINATION IN THE MARKETING OF VOICE MESSAGING SERVICES .....	6
C. INTERSTATE AND INTRASTATE VOICE MESSAGING SERVICES FORM A SINGLE COHESIVE SERVICE THAT CANNOT BE SEGREGATED IN THE PUBLIC INTEREST .....	7
D. STANDARDS TO BE APPLIED TO ASSURE COMPLIANCE WITH SECTION 260 OF THE TELECOMMUNICATIONS ACT OF 1996 .....	8
III. IMPOSITION OF SEPARATE AFFILIATE REQUIREMENTS FOR ALL INCUMBENT LECS .....	11
IV. THE SECTION 260 COMPLAINT PROCESS SHOULD FACILITATE THE DEVELOPMENT OF HEALTHY COMPETITION .....	12
IV CONCLUSION .....	15

## SUMMARY

In these comments, Voice-Tel, a nation-wide group of more than two hundred individually owned and operated small business communications consultants engaged, among other things, in the provision of a wide range of sophisticated voice messaging and retrieval services, urges the Commission to establish an environment that will foster the development of competition and innovation in this fast growing area of telecommunications. In this connection we note that the nature of telemessaging services requires preemption by the Commission in order not to thwart the intent of Congress. For reasons discussed in the body of these comments, Voice-Tel submits that all incumbent LECs be required to provide telemessaging services through a separate subsidiary.

An analysis of the Telecommunications Act of 1996 provides the Commission with an ample basis for exerting jurisdiction over all telemessaging services provided by incumbent LECs. The nature of telemessaging services is such that any attempt to segregate out the intrastate, whether interLATA or intraLATA aspects of these services would clearly impede and thwart the Commission lawful authority within the teaching of Louisiana Public Service Commission v. FCC, 476 U.S. 355, 106 S. Ct. 1890, 90 L.Ed.2d 369 (1986).

Voice-Tel urges the Commission to recognize that the antidiscrimination provisions of Section 260 are absolute, and, as such, are significantly stronger than similar provisions found in Sections 201 and 202 of the Communications Act of 1934.

Voice-Tel makes several specific recommendations with respect to the treatment that the Commission should accord telemessaging services. Because it is not practical or cost effective to separate out the activities of LEC employees without separating out the activities themselves, Voice-Tel suggests that the only way to ensure that there will be no discrimination in the marketing of telemessaging services is to require the establishment of a separate affiliate for all incumbent LECs. Specifically, Voice-Tel urges the Commission to require that all LECs provide their telemessaging services through a separate subsidiary and that the provision of any and all features, facilities and services to their telemessaging operations must be under prices, terms and conditions made available to their telemessaging competitors.

Voice-Tel also urges the Commission to require that marketing of LEC telemessaging services be subject to rules and regulations that prohibit a LEC from taking unfair advantage of its position as the provider of basic telecommunications services. In this connection, Voice-Tel makes certain specific suggestions that it believes will help insure the development of healthy competition for the benefit of the public in a manner consistent with the requirements of Section 260 of the 1996 Act. In conclusion Voice-Tel points out that its recommendations are to prevent discrimination and to create a climate that will assist the Commission in carrying out its mandate under the 1996 Act.

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In the Matter of

Implementation of the  
Telecommunications Act of 1996

Telemessaging,  
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Alarm Monitoring Services

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CC Docket No. 96-152

To the Commission:

COMMENTS OF  
VOICE-TEL

Two hundred fifteen individually owned and operated small business communications consultants representing 715 jobs doing business under the common name Voice Tel, through their attorney, hereby files their comments in the above-captioned docket. These comments do not pretend to cover every item upon which comment was invited by the Commission. Rather, the comments contained herein are designed to provide pertinent information that specifically affect the filers of these comments. In addition, these comments are designed to indicate the scope of rules that might assist in assuring compliance with the provisions of the Telecommunications Act of 1996 (the 1996 Act)<sup>1</sup>.

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. §§ 151 *et. seq.*

## **I. INTRODUCTION**

### **A. DESCRIPTION OF VOICE-TEL AND ITS BUSINESS**

Voice-Tel provides sophisticated voice messaging services that, among other things allows their customers (1) to respond to messages from other Voice-Tel customers, (2) to receive a message when they choose not to answer the telephone or when the called line is busy, (3) to respond to messages from other Voice-Tel customers without leaving the "mail box," (4) to pass messages on to other Voice-Tel customers, with or without comment, (5) to send a message to multiple Voice-Tel customers with one call, and (6) to be notified immediately when urgent messages await them. Voice-Tel also acts as a consultant in the provision of telecommunications services, and provides paging and long distance telecommunications services to its customers. All of this can be accomplished using the equipment owned and operated by Voice-Tel so that customers need not make any investment in equipment. Calls to mailboxes of other Voice-Tel customers may be made through the Voice-Tel network without entering the public switched network. The Voice-Tel network serves over 3500 cities and communities throughout the United States, Canada and Puerto Rico.

There are several features offered by Voice-Tel that are not generally available to customers of other voice messaging services. At the same time, there is substantial competition with the local exchange carriers (hereinafter "LECs" or "telcos") operating in the areas serviced by Voice-Tel. Some of this competition is similar to that faced from other competitors. However, the competition from the LECs is unique both in the way that LEC voice messaging services are marketed and in the way in which LECs integrate their voice messaging offerings with their other, basic telecommunications services.

## **B. SCOPE OF THESE COMMENTS**

These comments respond to those portions of the NPRM that address the provision of telemessaging services. In particular, it suggests ways in which the Commission can best fulfill its statutory obligations under Section 260 of the Act to establish a climate that will foster vigorous competition among providers of telemessaging services while protecting the current ratepayers. In this regard, Voice-Tel outlines the types of rules required to prevent anticompetitive discrimination by incumbent LECs.

In addition, these comments address the issues of Commission oversight of all telemessaging services without specific regard to the jurisdictional nature of any particular message. In this connection we note that the nature of telemessaging services supports preemption in order not to thwart the intent of Congress. For reasons discussed further below, Voice-Tel submits that all incumbent LECs be required to provide telemessaging services through a separate subsidiary.

Moreover, Voice-Tel's submits that Section 260 of the Telecommunications Act of 1996, provides the Commission with an ample basis for exerting jurisdiction over all telemessaging services provided by incumbent LECs. The nature of telemessaging services is such that any attempt to segregate out the intrastate, whether interLATA or intraLATA aspects of these services would clearly impede and thwart the Commission lawful authority within the teaching of Louisiana Public Service Commission v. FCC, 476 U.S. 355, 106 S. Ct. 1890, 90 L.Ed.2d 369 (1986).

## **II. SECTION 260 PROHIBITS ALL DISCRIMINATION WITHOUT REGARD TO THE REASONS BEHIND THE DISCRIMINATION**

Section 260 by its terms applies to "any local exchange carrier" subject to Section 251(c) of the Telecommunications Act of 1996. Section 251(c) of that Act establishes obligations for all incumbent local exchange carriers. Thus, Section 260 of the Act, unlike Sections 271 and 272, of the Act, is not limited to the BOCs. Under the provisions of Section 260(a)(1) of the Act, no incumbent LEC is permitted to subsidize its telemessaging services whether directly or indirectly.

Section 260(a)(2) prohibits any LEC from preferring or discriminating in favor of its telemessaging service operations. Unlike Sections 201(b) and 202(a) of the Communications Act of 1934, it matters not whether the discrimination is reasonable or just, or unreasonable or unjust.

Discrimination in all forms and no matter what the basis therefor is unlawful under Section 260. The language of this section is simple and straightforward. The enforcement should also be simple and straightforward. The Commission has asked for comments regarding the definition subsection of Section 260, which includes "ancillary services" that are offered in combination with voice mail and voice storage and retrieval with or without live operator services. Among the ancillary services provided by Voice-Tel and similar enterprises are forwarding services, both on an individual and broadcast basis, with or without annotations and facilities for responding to voice mail within the telemessaging system.<sup>2</sup> In addition, the voice mail services of Voice-Tel provides date and time notations and enables the voice mailbox subscriber to leave general and specific messages to callers. These are by no means the only ancillary services that are offered today. More important, as technology permits, there no doubt will be a number of new services ancillary to the main services currently provided that will be demanded by our customers.

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<sup>2</sup> This feature allows a person who receives a message from another person using the system to respond directly without having to place a telephone call. Instead, a message is left in the mail box of the original caller. With this feature, the person can "broadcast" both the original message and any answer to any or all persons on the system and can make annotations with respect to the original message or the answer.

As discussed in Voice-Tel's comments in CC Docket No. 96-149, Voice-Tel submits that the nondiscrimination provisions of Section 260 are absolute. Unlike Sections 201 and 202, any and all discrimination is prohibited under Section 260. Furthermore, under Section 260, it matters not if the discrimination is in the marketing of voice messaging or in the provision of the service itself. In both instances, any discrimination would be unlawful.

**A. SECTION 260 PROHIBITS ALL DISCRIMINATION IN THE PROVISION OF VOICE MESSAGING SERVICES**

The simple language of Section 260 makes it unlawful for any incumbent LEC to provide facilities or interconnections for its own voice messaging services on terms that are different from that offered to its voice messaging competitors. For example, it would not be sufficient for the incumbent LEC to charge different rates for facilities on the grounds that it has been able to engineer its telecommunications facilities in a unique manner that only it can use. If an incumbent LEC undertakes to reduce the costs of interconnection for voice messaging services for itself, it must be willing to do the same for its competitors.

Similarly, if an incumbent LEC chooses to co-locate its voice messaging facilities to reduce the costs of providing those facilities, it must offer to do the same for its competitors. In addition, if it provides specific features such as stutter dial tone for its voice messaging services, it must provide the same features to other voice messaging services at the same costs, terms and conditions that it makes them available to itself. Finally, it is suggested that the absolute ban on any discrimination required by Section 260 would bar an incumbent LEC from imposing unreasonable size requirements as a condition for obtaining any special features that it offers its own voice messaging services.

The Commission has invited comments on the extent to which the current requirements of Computer III and ONA would allow any discrimination that might be inconsistent with the requirements of the 1996 Act. Voice-Tel submits that those requirements may be inconsistent with the higher standards established in Section 260. Under Section 260 it is not sufficient for the interconnections offered to be comparable if the result is that the competitor is put at any disadvantage. Thus, if information about methods of interconnection is not made available on a timely basis to the LEC competitors, there may be discrimination under Section 260 even though there is compliance with 47 CFR 64.702(a) (3). Nevertheless, Voice-Tel is mindful of the costs associated with wholesale changes in the rules and regulations promulgated by this Commission. Therefore, Voice-Tel is not suggesting that the Commission make any specific revisions to its current rules until such time that there is sufficient experience under the provisions of Section 260 to determine whether such changes would be in the public interest.

**B. SECTION 260 PROHIBITS ALL DISCRIMINATION IN THE MARKETING OF VOICE MESSAGING SERVICES**

To a large extent the anti-discrimination provisions of Sections 201 and 202 of the Communications Act of 1934 relate mainly to the pricing of services and to the availability of facilities. The broad language of Section 260, it is submitted, extends the prohibition against discrimination to the marketing of voice messaging services and, in addition, makes *any* discrimination in pricing or other behavior unlawful. and, in addition, makes *any* discrimination in pricing or other behavior unlawful. The fact that Section 260 prohibits discrimination in every area and without regard to reasonableness is important precisely because many incumbent LECs have been pricing, marketing and otherwise treating their voice messaging services as if they were mere options available to their customers rather than a distinct separate service that

is provided by entities other than the LEC. In this connection, attention is directed to the documentation provided by Voice-Tel in its comments in CC Docket 96-113. Attached to those comments were copies of information provided in the US West white pages distributed to Denver subscribers.

The current practice of most incumbent LECs is to offer its voice messaging services whenever a customer requests a rearrangement or change or a new service. Under Section 260 of the 1996 Act, this should be prohibited as it is discriminatory because it favors the LEC service over the telemessaging services of the LEC competitors. Moreover, under Section 260, the same customer service representative should not be permitted to market the LEC voice messaging services along with the other options that the telephone company currently offers its customers. At the very least, any telephone company the service representative should be required to inform the customer that there are a variety of providers of telemessaging services.

**C. INTERSTATE AND INTRASTATE VOICE MESSAGING SERVICES FORM A SINGLE COHESIVE SERVICE THAT CANNOT BE SEGREGATED IN THE PUBLIC INTEREST**

Voice-Tel submits that Section 260 applies to telemessaging on both an intraLATA and interLATA basis. Section 260 does not in and of itself distinguish between interLATA and intraLATA because the fact is that telemessaging is a system wide service that cannot be limited to certain geographic areas without interference with the free flow of information. Therefore, there is every reason to read Section 260 as covering every instance of the provision of telemessaging services without regard to whether any particular voice mail message is interLATA or intraLATA. Moreover, the language of Section 260 does not limit the FCC's authority to either interstate or interLATA activities. Telemessaging services, by their very nature, involve significant interstate communications. The fact that Section 260 does not

specifically refer to interstate service should be read to mean that all telemessaging, because of its intrinsic nature, is subject to Section 260, regardless of the jurisdictional nature of a specific voice message.

Telemessaging directly affects interstate commerce and federal preemption by the Commission is justified. This is particularly true when Section 260 is read within the context of the other sections of the 1996 Act that delineate the conditions under which the FCC has been given authority by Congress. This together with the clear standards developed by the Supreme Court in Louisiana Public Service Commission v. FCC, 476 US 355 (1986), leads to the conclusion that the prohibition against any and all discrimination in the provision of telemessaging is subject to the provisions of Section 260 and that the Commission has been given jurisdiction by Congress to decide any and all complaints brought under that section.

**D. STANDARDS TO BE APPLIED TO ASSURE COMPLIANCE WITH SECTION 260 OF THE TELECOMMUNICATIONS ACT OF 1996**

The parameters of Section 260 and the Commission's responsibilities under that section independent of the detailed structural requirements of those sections of the 1996 Act dealing with the entrance of BOCs into in-region interLATA service. This means that the Commission must assume its responsibilities under Section 260 to determine how best to carry out fulfill the obligations imposed by that section. In this regard, Voice-Tel's experience leads it to urge the Commission to establish a framework that will permit it to carry out its responsibilities. That framework should be based on what is required by Section 260 and how the Commission can most efficiently insure that the requirements of the Act will be met.

As noted above, the requirements of Section 260 are set forth in a reasonably straightforward manner. Simply put, all discrimination is prohibited. No subsidization in any form is to be tolerated no matter how indirect that subsidization may be. No preferences are permitted, no matter how reasonable they might seem. These provisions are self-executing.

**The prohibitions stand without reference to any rules or regulations that the Commission may see fit to adopt to ensure compliance with the provisions of Section 260.**

**Under these circumstances, rules will serve to outline certain activities that the Commission determines constitutes prima facie violations of the prohibitions of Section 260. Such rules can assist in the efficient administration of the Commission's responsibilities under the Act and will assure that similar cases are treated similarly without reference to the skills of particular attorneys and others that may bring actions.**

Unlike Sections 201 and 202 of the Act where the Commission must determine the reasonableness of any claimed discrimination, Section 260 provides that any and all discrimination is unlawful. Thus, rules promulgated under this section need not be complex. They should state the clear expectations of the Commission with respect to any offering of telemessaging services by an incumbent LEC. They should also provide that a showing of difference is sufficient to raise the presumption of discrimination. Specifically, they should, at a minimum, provide the following:

1. No LEC should market its telemessaging service except through a separate subsidiary unless it is prepared to market the services of its competitors under the same terms and conditions.
2. No LEC should provide any facilities or services to its telemessaging operations except at prices, terms, and conditions made available to its telemessaging competitors.
3. Any features that the LEC makes available to its telemessaging services must be made available under the same prices, terms and conditions to all its competitors.
4. No LEC can market its telemessaging services unless it markets its competitors services at the same time and under the same terms and conditions.
5. No LEC can advertise its telemessaging services in its telephone directories or bills unless equal space and equal time is provided to its competitors.
6. Any and all time spent by any employee of a LEC in the marketing or servicing of its telemessaging options shall be separately accounted for.

7. If a LEC permits the marketing or servicing of its telemessaging options by its own employees, such employees must be made available for the marketing and servicing of the LEC's telemessaging competitors on the same terms and conditions.
8. Whatever access an incumbent LEC provides its telemessaging services to its switches and lines must be made available to its competitors under the same terms and conditions.

Voice-Tel submits that anything less than the substance outlined above will result in discrimination. At the same time, it should be understood that Voice-Tel does not believe that reliance on these factors alone will necessarily achieve compliance with the thrust of the new Act.

### **III. IMPOSITION OF SEPARATE AFFILIATE REQUIREMENTS FOR ALL INCUMBENT LECS**

Because it is not practical or cost effective to separate out the activities of LEC employees without separating out the activities themselves, Voice-Tel suggests that the only way to ensure that there will be no discrimination in the marketing of telemessaging services is to require the establishment of a separate affiliate for all incumbent LECs. Section 272 of the Act, which applies specifically to the Bell system companies, requires that voice messaging be conducted through a separate subsidiary as a condition for the entrance of a BOC into in-region interLATA service. But nothing in Section 272 or 260 inhibits the imposition of Commission rules and regulations that would require the establishment of a separate subsidiary for all voice messaging services without regard to whether the LEC wants to provide in-region interLATA services and without regard to whether the incumbent LEC is or is not a BOC. Simply put, the way in which the Commission discharges its responsibilities under Section 260, is not circumscribed by the 1996 Act. The Act's requirement as set forth in

**Section 272 is that a BOC wishing to embark on the offering of in-region interLATA services must establish a separate subsidiary for any and all telemessaging services it may wish to offer. The Commission's responsibility under Section 260 is to prevent any and all discrimination in the marketing and provision of telemessaging services by an incumbent LEC without regard to that LEC's status as a Bell operating company and without regard to its decision to offer in-region interLATA services.**

**The only way in which the Commission can ensure that a LEC will not prefer or discriminate in favor of its telemessaging service operations is to require the establishment of separate affiliates. In this connection, Voice-Tel respectfully submits that the Commission has the authority, within the confines of Section 260, to determine that the non-discrimination provisions of that section can only be assured by the imposition of a requirement that telemessaging only be offered through a separate subsidiary. Although there is nothing in the Act that would prohibit an incumbent LEC that is not a BOC from offering telemessaging services without a separate affiliate, Voice-Tel respectfully submits that the nature of telemessaging and the rules that Voice-Tel submits are required to prevent discrimination lead to the conclusion that the imposition of a requirement that there be a separate subsidiary for all incumbent LECs is reasonable and will facilitate the work of the Commission.**

#### **IV. THE SECTION 260 COMPLAINT PROCESS SHOULD FACILITATE THE DEVELOPMENT OF HEALTHY COMPETITION**

**As the Commission recognizes, the expedited procedures provisions in Section 260 are an essential part of the statutory scheme designed to promote full and fair competition in telemessaging and invites comments on the legal and evidentiary standards that should be required to make the requisite showing under that section. In this connection, the Commission**

**makes reference to the 120-day statutory window and asks that comments take cognizance of this provision in making any recommendations.**

**One specific area in which the Commission has invited comments is whether, in the context of Section 260, the shifting of the ultimate burden to the defendant would best advance the pro-competitive goals of the 1996 Act. (NPRM, paragraph 82). In addition, the Commission notes that Section 260(b) requires that persons asking for expedited procedures show that they have suffered "material financial harm" and invites comment on what constitutes "material financial harm" within the context of the 1996 Act.**

**Voice-Tel submits that the necessity to prove specific "material financial harm" on a case-by-case basis within the context of an expedited hearing procedure would effectively undermine the entire purpose of that section. Voice-Tel understands that the Commission plans to establish a separate docket to determine expedited procedures and will comment further in the context of that docket with respect to specific procedures that the Commission should adopt.**

**For the purposes of this NPRM, Voice-Tel urges that the Commission recognize that standards against which allegations may be judged, at least on a preliminary basis, are required if there is to be resolution within the required 120 days. In this connection, Voice-Tel notes that a dominant entity can design the discrimination in a manner that can hide the financial harm that the discrimination causes. For this reason, Voice-Tel would urge the Commission not to require specific showings of loss of business but should rely on the discrimination itself as evidence of an intent to harm. This position is also consistent with the clear language of Section 260 that prohibits all discrimination regardless of its form. Adoption of a policy consistent with this position will shift the burden of going forward to the defendant to demonstrate that its actions do not have a negative financial impact on its competitors. Insofar**

as the issue is whether a complainant must allege or demonstrate financial harm, an allegation of harm is required under the expedited complaint procedures of Section 260. The level of proof must, however, be determined within the context of the requirement that the procedures be expedited. This, in turn, would seem to require that, once certain basic facts are demonstrated, the defendant would have the burden to demonstrate why its actions are lawful under the provisions of Section 260.

Voice-Tel further urges the Commission to adopt a policy that firmly supports the remedial aspects of Section 260. Wherever a LEC is shown to have discriminated and where harm has been demonstrated, the Commission should not hesitate to issue an appropriate order to ensure that the unlawful behavior ceases at once. This is required if Section 260 is to have any meaning at all. In this context, Voice-Tel submits that a prima facie showing should be sufficient. In other words, once the Commission has established guidelines, there is no basis for moving the final burden away from the defendant. All that is necessary to shift this burden should be a simple that the pricing of the service by the LEC is less than the competitor could possibly provide the service, that the quality of service provided by the LEC to the competitor is less than what the LEC is providing to its customer, or that the terms under which the LEC is offering its competitive service includes access that is unavailable to its competitor at a reasonable price. Anything else would disserve the purposes of Section 260.

Voice-Tel further submits that an order "to cease engaging" under sections 260(b) and 275(c) gives the Commission authority to issue a cease and desist order. In this connection, Voice-Tel notes that the difference in the language of Section 274 may well be due to the fact that under that section a party may proceed in court rather than at the Commission. Thus the language in the latter section may well derive from legislation where resort to the federal courts in the first instance is contemplated. In contrast, Section 260 recognizes the need for

immediate action by an agency that is familiar with the business practices of the telemessaging industry in situations where a telemessaging entity may be the subject of discrimination by a LEC. Finally, in response to the Commission's invitation for comment on actions that it might take to deter violations of Section 260, Voice-Tel respectfully suggests that the FCC establish clear rules stating what constitutes prima facie showings of violations of that Section. The FCC should also provide easy procedures for complainants to obtain swift resolution of disputes under Section 260. In this connection, Voice-Tel intends to file appropriate comments in the context of the Commission's Docket dealing with procedures under Section 260.

## V. CONCLUSION

The purposes of the Telecommunications Act of 1996 will be achieved only if the Commission continues to take those actions necessary to enforce its provisions. Towards this end, the Voice-Tel urges the Commission to adopt the policies suggested herein and to take such other steps as may prove necessary to accomplish the goals of full and free competition in the public interest in the area of telemessaging.

Respectfully submitted,



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September 4, 1996

as the issue is whether a complainant must allege or demonstrate financial harm, an allegation of harm is required under the expedited complaint procedures of Section 260. The level of proof must, however, be determined within the context of the requirement that the procedures be expedited. This, in turn, would seem to require that, once certain basic facts are demonstrated, the defendant would have the burden to demonstrate why its actions are lawful under the provisions of Section 260.

Voice-Tel further urges the Commission to adopt a policy that firmly supports the remedial aspects of Section 260. Wherever a LEC is shown to have discriminated and where harm has been demonstrated, the Commission should not hesitate to issue an appropriate order to ensure that the unlawful behavior ceases at once. This is required if Section 260 is to have any meaning at all. In this context, Voice-Tel submits that a prima facie showing should be sufficient. In other words, once the Commission has established guidelines, there is no basis for moving the final burden away from the defendant. All that is necessary to shift this burden should be a simple that the pricing of the service by the LEC is less than the competitor could possibly provide the service, that the quality of service provided by the LEC to the competitor is less than what the LEC is providing to its customer, or that the terms under which the LEC is offering its competitive service includes access that is unavailable to its competitor at a reasonable price. Anything else would disserve the purposes of Section 260.

Voice-Tel further submits that an order "to cease engaging" under sections 260(b) and 275(c) gives the Commission authority to issue a cease and desist order. In this connection, Voice-Tel notes that the difference in the language of Section 274 may well be due to the fact that under that section a party may proceed in court rather than at the Commission. Thus the language in the latter section may well derive from legislation where resort to the federal courts in the first instance is contemplated. In contrast, Section 260 recognizes the need for immediate action by an agency that is familiar with the business practices of the telemessaging industry.

## V. CONCLUSION

The purposes of the Telecommunications Act of 1996 will be achieved only if the Commission continues to take those actions necessary to enforce its provisions. Towards this end, the Voice-Tel urges the Commission to adopt the policies suggested herein and to take such other steps as may prove necessary to accomplish the goals of full and free competition in the public interest in the area of telemessaging.

Respectfully submitted,



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September 4, 1996

An Attorney for Voice-Tel